

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

<hr/>	)		
<b>In the matter of</b>	)	<b>DOCKET Nos.</b>	<b>OST-97-2881</b>
	)		<b>OST-97-3014</b>
	)		<b>OST-98-4775</b>
<b>COMPUTER</b>	)		<b>OST-99-5888</b>
<b>RESERVATION SYSTEMS (CRS)</b>	)		
<b>REGULATIONS</b>	)		
	)		
<b>Notice of Proposed Rulemaking</b>	)		
<hr/>	)		

**RESPONSE OF THE AIR CARRIER ASSOCIATION OF AMERICA  
TO PETITION FOR EXTENSION OF DEADLINES AND FOR EXTENSION OF CRS  
RULES SUNSET DATE**

Communications with respect to this document should be addressed to:

Edward P. Faberman  
AIR CARRIER ASSOCIATION  
OF AMERICA  
1500 K Street, NW, Suite 250  
Washington, DC 20005-1714  
Tel: 202-639-7502  
Fax: 202-639-7505

December 4, 2002

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

<hr/>	)		
<b>In the matter of</b>	)	<b>DOCKET Nos.</b>	<b>OST-97-2881</b>
	)		<b>OST-97-3014</b>
	)		<b>OST-98-4775</b>
<b>COMPUTER</b>	)		<b>OST-99-5888</b>
<b>RESERVATION SYSTEMS (CRS)</b>	)		
<b>REGULATIONS</b>	)		
	)		
<b>Notice of Proposed Rulemaking</b>	)		
<hr/>	)		

**RESPONSE OF THE AIR CARRIER ASSOCIATION OF AMERICA  
TO PETITION FOR EXTENSION OF DEADLINES AND FOR EXTENSION OF CRS  
RULES SUNSET DATE**

On November 22, 2002, a number of parties (“Petitioners”) including Amadeus Global Travel Distribution, S.A.; Galileo International L.L.C., Sabre, Inc.; Interactive Travel Services Association; American Society of Travel Agents, Inc.; Rosenbluth International; National Business Travel Association and National Consumers League submitted a petition requesting that the Department of Transportation (“Department”) extend the due date for initial comments on the Department’s November 15, 2002 Notice of Proposed Rulemaking (“NPRM”), “CRS Regulations and Statement of Policy”, from January 14, 2003 to March 16, 2003 and to extend the due date for reply comments from February 13, 2003 to May 15, 2003. The Petitioners requested that the Department act on their Petition no later than December 3, 2002 in order that

they may know as soon as possible what deadlines they must plan to meet in this critically important proceeding.

In their filing, the Petitioners state that the Department has devoted over five years to its review of the CRS Rules and that the proceeding has been a major undertaking, involving comments and proposals submitted by interested parties, studies and investigations conducted by the Department and others regarding the Department's CRS regulations and the impact of the Internet. They also stated that the record already amassed in this proceeding is detailed, lengthy and complex, and there is every reason to believe that the Department can expect extensive and conflicting comments in response to its NPRM. The Department previously extended the rule from December 31, 1997 to March 31, 1999, and again from March 31, 2000, to March 31, 2001, then to March 31, 2002, and most recently until March 31, 2003.

While Petitioners make a number of valid points, the Air Carrier Association of America ("ACAA") urges the Department not to delay for any period of time its consideration of proposed changes to the "Marketing and Booking" Data proposal, Section 255.10(a), "Marketing and Booking Information." Even if the Department decides to provide any additional time for submission of comments on the proposed CRS modifications, it should first block release of any data showing sale of tickets on an airline unless that airline consents to release of that information. ACAA does not object to the Department taking additional time to evaluate more complex CRS issues.

The Department has been “finalizing” CRS regulations for over five years. Since the day that the Department first implemented the CRS rules, airline concentration and consolidation has increased significantly. There is no question that new entry is becoming more and more difficult. Every year that the Department waits to finalize the CRS Rules, additional carriers cease operations or merge allowing the dominant carriers to increase their stranglehold over hubs and regions of the country

### **The Department’s CRS Regulations Assist Anti-Competitive Behavior**

As the Department has acknowledged, new entrants have been driven out of markets by behavior directed at them by incumbent carriers. A number of carriers that submitted comments in the CRS rulemaking process including Legend, Reno, and Vanguard, are no longer in business. Department studies have acknowledged that Marketing Information Data Tapes (“MIDT”) can be utilized to impact competition.

The use of MIDT data to damage competitors has been encouraged by 14 C.F.R. § 255.10(a) which allows large carriers to monitor the ticketing activities of travel agencies and major corporations. This section also allows those large carriers to monitor ticket sales by new entrant carriers allowing those large carriers to take action against new entrants. The Department’s regulation 14 C.F.R. § 255.10(a) requires that each CRS:

shall make available to all U.S. participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to carriers that it elects to generate from its system. The data made available shall be as complete and accurate as the data provided a system owner.

For the past several years, various parties, including some that joined in submitting the November 22, 2002 petition, have called upon the Department to eliminate the “anti-competitive” weapon provided by Section 255.10(a). On March 14, 2000, the American Society of Travel Agents, Inc., (“ASTA”) requested that the Department begin an expedited review of 14 C.F.R. § 255.10(a). The National Business Travel Association (“NBTA”) has also urged the Department to prevent carriers from utilizing Section 255.10(a). NBTA has urged the Department to suspend Section 255.10(a) because the regulation opens the door for carriers to monitor the ticketing activities of travel agencies and major corporations. In a previous filing in this rulemaking, NBTA noted:

NBTA believes that an exchange of information must occur with verification and approval of the corporations and carriers who would be directly impacted by its execution.

\* \* \*

Under Section 255.10, the corporation will have no control of how an airline uses *their* data and the proprietary nature of the data. The proposal will unmask the travel patterns and tendencies of corporations, allowing airlines, including ones a corporation is not contracted with, to sell and purchase a company’s travel data.

[Comments of the National Business Travel Association, OST-99-2881, September 21, 2000, 4-5]

On April 12, 2000, American Express submitted comments stating that:

Amex concurs with American Society of Travel Agents (“ASTA”), OST-2000-6984-5, that the Department should expedite its review of Section 255.10. This Section, which directs carrier-owned CRS vendors to provide sales and marketing data to all airlines, should be terminated at the earliest possible date. We made this point in our original comments filed in December 1997, OST-97-2881-33, but technology has advanced to such a degree since then that termination of this Section is now critical.

When Section 255.10 was enacted, CRSs could only produce historical data, typically 60-90 days post flight, which the airlines would use for trend analysis and other acceptable purposes. Since then, technology has progressed to the point that today CRSs are producing and making available real time data. An airline can, thus, obtain up to the minute analysis of competitors' sales, market share and customer information, even on a *pre-flight* basis. A carrier, so disposed, is able to use this real time (and advance) data for predatory pricing, blocking new entrants from the marketplace, signaling and other anticompetitive activity. **What began as a tool to promote competition has become a weapon to eliminate it.**

[emphasis added]

Other parties have also filed comments in this lengthy proceeding also urging the Department to take swift action to prevent sale of sensitive business information. On August 22, 2001, in a letter to the Department, the Minnesota State Attorney General, Mike Hatch stated:

As you know, the underlying purpose of the CRS Rules is "to prevent unfair, deceptive, predatory, and anti-competitive practices in air transportation." 14 C.F.R. § 255.1. Unfortunately, the portion of the rules that require the sharing of corporate marketing data can have precisely the opposite effect in markets dominated by a large carrier.

Perhaps the greatest threat to a small, low cost carrier attempting to enter a market dominated by a large carrier is the prospect of the large carrier flooding the routes flown by new entrant with extra flights matching prices. Such tactics prevent the new entrant from gaining sufficient market share to achieve economic viability, ultimately forcing the new entrant to withdraw from the route and thereby leaving the dominant carrier free to decrease service and raise prices. This scenario has been played out time and time again.

The data sharing provisions of the CRS Rules make it that much easier for a dominant carrier to engage in this anti-competitive practice by allowing large carriers to obtain instant data on travel agency and corporate ticket sales of a new entrant carrier attempting to enter a dominated hub. The rules facilitate the large carrier's flooding of markets where the new entrant is showing signs of strength before the new entrant can gain a toe-hold.

The Department of Justice submitted comments to the Department on the anti-competitive use of CRSs in the market place:

Several characteristics of the airline industry increase the ability of carriers to engage in coordinated interaction. Most importantly, carriers have almost instantaneous knowledge

of competitor's fare changes and the ability to quickly respond to any changes. . . . Furthermore, although information on unpublished fare competition is certainly less perfect than for published fares, carriers are still able, from ARC and CRS data, to identify corporations and travel agencies where they are losing business and usually the competitor that is gaining business at their expense. **Carriers thus have the ability to identify and retaliate against competitors** reducing even off-tariff fares.

U.S.-U.K. Alliance (Docket OST 2001-11029-29, p28) December 17, 2001, [emphasis added]

The Department has acknowledged the anti-competitive use of "Marketing and Booking Information":

In addition, computer reservation systems ("CRS's") have played an important role in airline distribution...An incumbent airline can learn from a CRS the fares being charged by a new rival and can plan its response. Levine, "Airline Competition in Deregulated Markets," at 459-463.

Department's Enforcement Policy Regarding Unfair Exclusionary Conduct In The Air Transportation Industry, Docket OST-98-3713, "Findings and Conclusions on the Economic, Policy, and Legal Issues"

By enabling a large carrier to oversee the details of travel agency and corporate business transactions and to monitor those utilizing a new entrant's service, the Department provides large carriers with even more data to eliminate lower fares and, ultimately, competition.

In the Department's November 15, 2002 NPRM, the Department stated that the release of MIDT data must to halted. In the NPRM, the Department stated:

Each system's data show how many bookings are made by each travel agency using that system on each airline in individual markets, the fare basis used for each booking, and the flight booked by each passenger.

\* \* \* \* \*

Several parties contend that airlines use the data to “poach” customers booked on another airline. Midwest Express makes such a complaint, Midwest Express Comments at 29, as do ASTA and NBTA. ASTA comment on Proposed Extension at 4.

\* \* \* \* \*

As discussed below, the availability of the detailed data now being sold appears to undermine airline competition, at least in domestic markets.

### **The Department Cannot Delay Amending Section 255.10(a)**

The evidence against Section 255.10(a) is clear. The Department needs to take immediate actions to modify Section 255.10(a) regardless of the complexity of other issues addressed in the CRS review.

While the Department is finalizing each aspect of the CRS proposal, it should not allow this anti-competitive weapon (Section 255.10(a)) to be aimed at new entrants, and others. If the Department does not act to address the issues that have deterred airline competition, fewer passengers and communities will benefit from competitive fares.

Providing carriers with continued use of information obtained through Section 255.10(a) is contrary to the public interest and the Department’s statutory responsibilities to promote competition. The studies have been thorough and definitive. It is time for the Department to “move quickly” and eliminate this method of predation.



As the Department noted in a previous NPRM:

Comments were filed by several travel agency parties and the Association of Air Carriers of America requesting expedited action on an amendment that would bar or restrict systems from providing booking and marketing data to airlines. While we currently intend to address all of the rulemaking issues in the overall reexamination, and to do so promptly, we will consider acting more quickly on specific issues as necessary.

Therefore, ACAA requests that the Department “act more quickly” and immediately modify 14 CFR § 255.10(a) so that a carrier would only be allowed to buy the data of another carrier through a CRS system provided that the other carrier specifically agrees to the sale of its data. If a carrier objects to the sale of its data, it could not be sold by any system under a modified Section 255.10(a). Section 255.10(a) should be amended as follows:

**§ 255.10 Marketing and booking information.**

(a) Each system shall make available to all U.S. participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to carriers that it elects to generate from its system subject to the following conditions: 1) The data made available shall be as complete and accurate as the data provided a system owner; and 2) The system shall not provide to any participating carrier data on another carrier unless that other carrier has provided written authorization for the system to release the data.

The need to level the playing field has never been greater. At the same time that this NPRM is available for comment, the Department is also reviewing the largest proposal alliance in U.S. history that would allow three of the nation’s largest carriers to work together. They must not be allowed to utilize data available under Section 255.10(a). By taking this small step, the Department will eliminate one of the road blocks to the expansion of competition.

Any action taken by the Department to extend the comment period for any aspect of the notice, as requested by Petitioners, must not apply to its review of Section 255.10(a). The Department should not put this action off for one more day. Too much is at stake.

Respectfully submitted,

---

Edward P. Faberman  
Executive Director

AIR CARRIER ASSOCIATION OF AMERICA  
1500 K Street, NW, Suite 250  
Washington, DC 20005-1714  
Tel: 202-639-7502  
Fax: 202-639-7505

December 3, 2002

### **CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the Response of the Air Carrier Association of America to Petition for Extension of Deadlines and for Extension of CRS Rules Sunset Date, by e-mail or mail on December 4, 2002 to each of the persons listed below.

---

Sonia S. Pak

## **SERVICE LIST**

Robert Blakeney, Esq.  
4300 Sigma Road, Suite 100  
Dallas, TX 75244  
Attorney for Colwick Travel

David H. Coburn  
Carol R. Gosain  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
Attorneys for Amadeus Global Travel  
Distribution, S.A.

Robert E. Cohn  
Alexander der Bellen  
Counsel for Delta Air Lines  
Shaw Pittman, LLP  
2300 N Street, NW  
Washington, DC 20037  
[Robert.cohn@shawpittman.com](mailto:Robert.cohn@shawpittman.com)  
[Sascha.vanderbellen@shawpittman.com](mailto:Sascha.vanderbellen@shawpittman.com)

Rosemarie Christofolo, Esq.  
1630 S. Stapley Drive, Suite 217  
Mesa, AZ 85204  
Attorney for Alteus International

Fred DeCicco, Esq.  
Pollack, Pollack, Isaac & DeCicco  
225 Broadway  
New York, NY 10007  
Attorney for Protravel International

Linda F. Golodner  
President  
National consumers League  
1701 K Street, NW, Suite 1200  
Washington, DC 20006

Michael Goodman, esq.  
Wolf & Goodman  
1350 S. Glencoe Street  
Denver, CO 80222  
Attorney for Compass Travel, LLC

Roy Hadley, Esq.  
World Travel BTI  
1055 Lenox Park Boulevard  
Suite 420  
Atlanta, GA 30319

Brian Hand, Esq.  
Nordlicht & Hand  
645 5<sup>th</sup> Avenue  
New York, NY 10022  
Attorney for Sea Gate Travel Group, LLC

R. Bruce Keiner, Jr.  
Counsel for Continental Airlines  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
[rbkeiner@crowell.com](mailto:rbkeiner@crowell.com)

Eugene Laney, Jr.  
Director of Information & Legislative  
Services  
National Business Travel Association  
110 North Royal Street, 4<sup>th</sup> Floor  
Alexandria, VA 22314  
[elaney@nbta.org](mailto:elaney@nbta.org)

Jeffrey A. Manley  
Counsel for United Airlines  
Wilmer, Cutler & Pickering  
2445 M Street, NW  
Washington, DC 20037  
[jmanley@wilmer.com](mailto:jmanley@wilmer.com)

Andrew Milne, Esq.  
7918 Jones Branch Drive, Suite 600  
McLean, VA 22102  
Attorney for Austin Travel

Carl B. Nelson, Jr.  
Associate General Counsel  
American Airlines, Inc.  
1101 17<sup>th</sup> Street, NW Suite 600  
Washington, DC 20036  
[carlnelson@aa.com](mailto:carlnelson@aa.com)

Eugene A. Over, Jr., Esq.  
General Counsel  
Navigant International, Inc.  
84 Inverness Circle East  
Englewood, CO 80112  
Attorney for Navigant International, Inc.

Kenneth P. Quinn, Esq.  
Pillsbury Winthrop LLP  
1133 Connecticut Avenue, NW  
Suite 1200  
Washington, DC 20036  
Attorney for Interactive Travel Services  
Assoc.  
[kquinn@pillsburywinthrop.com](mailto:kquinn@pillsburywinthrop.com)

Thomas Ray  
Office of the General Counsel  
U.S. Department of Transportation  
400 Seventh Street, SW  
Room 4102  
Washington, DC 20590  
[tom.ray@ost.dot.gov](mailto:tom.ray@ost.dot.gov)

John Risberg, Esq.  
1395 N. Highway drive  
Fenton, St. Louis, MO 63099  
Attorney for Maritz TQ3

Paul M. Ruden, Esq.  
American Society of Travel Agents, Inc.  
1101 King Street  
Alexandria, VA 22314  
[paulr@astahq.com](mailto:paulr@astahq.com)

Don Saunders, Esq.  
800 N.W. Loop 410  
San Antonio, TX 78216  
Attorney for Corporate Travel Planners

David Swarte, Esq.  
Sabre, Inc.  
3150 Sabre Drive  
Mail Drop 9105  
Southlake, TX 76092  
[david.schwarte@sabre.com](mailto:david.schwarte@sabre.com)

David Warmflash, Esq.  
Sexter & Warmflash  
115 Boradway  
New York, NY 10006  
Attorney for Tzell Travel

Samuel H. Wright  
Cendant Corporation  
101 Constitution Avenue, NW  
Suite 800  
Washington, DC 20001  
For Galileo Int'l LLC & Rosenbluth Int'l